

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

**CATHERINE PALMER, individually and
on behalf of all others similarly situated;**

Plaintiff,

vs.

KCI USA, INC.,

Defendant.

4:19CV3084

ORDER

This matter is before the Court on Defendant KCI USA, Inc.'s Motion to Exclude the Expert Report of Jeffrey Hansen ([Filing No. 63](#)) for its untimely disclosure under Federal Rule of Civil Procedure 26(a)(2). The Court will grant Defendant's motion to the extent it asks for leave to disclose a rebuttal report to the Hansen report.

On October 5, 2020, Plaintiff served a rebuttal report authored by Hansen that Defendant asserts is, in substance, Plaintiff's expert report-in-chief. Therefore, Defendant maintains the Hansen report was untimely disclosed under the case progression order, which set Plaintiff's deadline for expert disclosures as August 18, 2020. ([Filing No. 41](#)). Defendant asks the Court to exclude Hansen's report as a sanction for its untimely disclosure, or in the alternative, permit Defendant to prepare a rebuttal report. ([Filing No. 63 at pp. 2-3](#)); see Fed. R. Civ. P. 37(c)(1)(providing the district court with discretion to exclude belatedly disclosed materials or to impose a lesser sanction than exclusion).

The Court contacted counsel for the parties by email on October 20, 2020, to inquire whether permitting Defendant to disclose a sur-rebuttal expert report three-days in advance of that expert's deposition, together with an extension of the deposition deadline, would be an acceptable resolution to the motion. The parties ultimately agreed. Accordingly,

IT IS ORDERED: Defendant's Motion to Exclude the Expert Report of Jeffrey Hansen as Untimely ([Filing No. 63](#)) is granted, in part. Defendant is granted leave to disclose a sur-rebuttal report to the report of Jeffrey Hansen three-days in advance of Defendant's expert's deposition. The deposition deadline is extended to October 30, 2020.

Dated this 21st day of October, 2020.

BY THE COURT:

s/Michael D. Nelson
United States Magistrate Judge